IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9325 OF 2005

Karbhari Pandurang Mundhe ..Petitioner

Vs.

Saibanna Durgappa Dhotre and ors. ..Respondents

Mr. Balasaheb Bandal h/f Mr. U.P. Warunjikar for petitioner.

Mr. I.M. Khairdi for respondent nos.1 and 2.

CORAM: B.H. MARLAPALLE, J.

Date : August 14, 2006.

P.C.:

1. Heard the learned counsel for the respective parties. In the impugned order dated 18/11/2005 rejecting the application at Exh.147 in Special Civil Suit No. 82 of 2002 the observations of the trial court that the petitioner-plaintiff was not diligent with the matter and not interested to proceed with the trial of the suit cannot be faulted with, if regards be had to the order passed by the trial court below Exh. 145 and the orders passed by this court in Writ Petition No.208 of 2005 on 27/1/2005 and Writ Petition

No.3292 of 2005 on 12/9/2005. Both the petitions were rejected summarily by this court. Applications after applications appeared to have been filed by the plaintiff and in a suit which, in fact, has been instituted in the year 1999.

2. On 18/11/2005 the plaintiff filed an application at Exh.147 praying to set aside the order of no additional evidence which was passed on 21/10/2005 below Exh.1 by the trial court and this application has been rejected by the impugned order. While rejecting Writ Petition No.208 of 2005 this court vide its order dated 27/1/2005 had given an opportunity to the plaintiff to lead additional evidence only relating to the amendment effected, by way of an affidavit and the application at Exh.147 will have to be considered only to this extent and this a fit case where the plaintiff's right to lead such additional evidence should be protected by imposing exemplary costs and by giving a limited opportunity to lead such evidence.

3. Hence, the impugned order is set aside and the

plaintiff is granted liberty to lead additional evidence as contemplated by this court in its order dated 27/1/2005 passed in Writ Petition No.208 of 2005. The plaintiff shall appear before the trial court on 21/8/2006, place a copy of this order before the trial court along with an application and the trial court will grant him one last opportunity to lead additional evidence and complete the same by 31st August, 2006, subject to remittance of an amount of Rs.5000/- by way of costs and costs should be remitted on 21/8/2006 with the trial court and shall be allowed to be withdrawn by the defendants.

4. Certified copy is expedited.

(B.H. Marlapalle,J.)